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OCT 22 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 22, 2001

VIA COURIER

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Birch Telecom's Comments on BellSouth's Application for Authorization to Provide In-Region, InterLATA Services in Georgia and Louisiana, Docket No. CC-01-277

Dear Ms. Salas:

Birch Telecom is filing comments on BellSouth Corporation's application for authorization under Section 271 of the Communications Act to provide in-region, interLATA services in the states of Georgia and Louisiana. Birch Telecom is filing a confidential portion of the submission and a redacted version of the entire submission.

If you have any questions, please call me at (202) 955-6668.

Sincerely,

Robert Felgar

Robert N. Felgar

RNF/mjo
Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana	)	CC Docket No. 01-277

COMMENTS OF BIRCH TELECOM OF THE SOUTH, INC.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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COMMENTS OF BIRCH TELECOM OF THE SOUTH, INC.

Birch Telecom of the South, Inc. ("Birch") files these comments pursuant to the Public Notice (DA 01-2286) issued October 2, 2001 in this matter, seeking comment on BellSouth's application for Section 271 in-region long distance authority for Georgia and Louisiana ("Application").

I. INTRODUCTION AND SUMMARY

Birch is a competitive local exchange carrier ("CLEC") focused on serving the small business and residential markets. In January 2001, Birch launched its campaign to provide service in the BellSouth region. Birch currently provides service in Georgia and four other BellSouth states, including Tennessee, North Carolina, South Carolina, and Alabama. To date, Birch has over **[redacted]** access lines in the state of Georgia.

Prior to entering the BellSouth region, Birch had already established a competitive presence in the Southwestern Bell Telephone Company ("SWBT") territories of Kansas, Missouri, Texas and Oklahoma. With over 250,000 lines in service in the SWBT region, Birch has had a great deal of experience in working with a Regional Bell Operating Company ("RBOC") in both a pre- and a post-

Section 271 environment. As a result of the extensive work that Birch did with SWBT to iron out the problems with SWBT's operational support systems ("OSS"), Birch was able to support SWBT's Section 271 applications for Texas and for Kansas/Oklahoma.

Birch cannot, however, support the instant Application. Through these comments and supporting affidavits, Birch will demonstrate that the Application must be denied as failing to meet item 2 of the "competitive checklist" of Section 271. 47 U.S.C. § 271(c)(2)(B). Checklist item 2 requires a demonstration of "nondiscriminatory access to network elements" and includes OSS functionality. 47 U.S.C. § 271(c)(2)(B)(ii).

The Application must be denied on two grounds. First, an analysis of BellSouth's performance measurement data leads to the conclusion that the performance being reported by BellSouth to this Commission is inaccurate and overstated. While the data reviewed by Birch was the Birch-specific data supplied to it by BellSouth, the errors identified by Birch are not unique to Birch. Rather, the errors are endemic to all the data supplied by BellSouth in support of its performance. As a result, the Commission cannot rely upon BellSouth's data to support a finding of compliance with the checklist. Second, even if BellSouth's data was reliable, the performance measures themselves are inadequate. BellSouth's target benchmarks set the bar considerably lower than the performance measures approved by the Commission in prior Section 271 orders and are not sufficient to ensure that BellSouth provides CLECs with nondiscriminatory access to unbundled network elements ("UNEs"). In this regard, Birch identifies several key areas in which BellSouth's performance to Birch, and presumably other CLECs, is grossly deficient.

In analyzing the level of performance Birch has consistently received from BellSouth throughout 2001, Birch concludes that BellSouth is today where SBC was in the summer of 1999. In the summer of 1999, SBC actively engaged in a collaborative process with the Texas Commission and CLECs to do what was necessary to build an acceptable operational framework within which CLECs would have a meaningful opportunity to compete.

At that time, SBC sought to gain Section 271 authority in Texas and did many key things to achieve that goal. SBC transformed its corporate attitude and began to embrace its role as a wholesale provider of services to CLECs. In addition, SBC worked diligently with the other parties to develop a comprehensive Performance Measurement framework, Performance Remedy Plan and a model Section 271 interconnection agreement that has been the basis for SBC Section 271 applications throughout the SWBT region. This Commission commended the tremendous efforts undertaken by the Texas Commission and SBC in its quest for Section 271 approval in Texas.[1] The difference between SBC and BellSouth is that BellSouth continues to cling to its antiquated, monopolistic practices, while attempting to convince the Commission that BellSouth has taken all the requisite steps previously enumerated by the Commission for Verizon and SBC to be granted Section 271 authority. For example, Birch will show this Commission that spending

[1] *Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18354, ¶ 3 (2000) ("*Texas Order*").

$1.6 billion on improving its OSS systems[2] in no way proves that BellSouth's systems are better at processing CLEC orders. Birch exists and continues to compete in a post-Section 271 environment in Kansas, Oklahoma and Texas. Critical to Birch's viability is the performance of SWBT under the Performance Measurement framework approved by the Texas Commission as well as this Commission. Also critical to Birch have been the enforcement of the Performance Remedy Plan for poor performance by SWBT and the integrity of the data underlying the framework captured and reported by SWBT. Birch asserts that its continued viability in Georgia and the remainder of the BellSouth region similarly will be dependent on the level of performance BellSouth provides to Birch.[3] Given the current status of BellSouth's OSS and Change Control process, BellSouth's current level of performance is simply inadequate. Moreover, critical modifications must be made to the Service Quality Metrics ("SQM") plan approved by the Georgia Public Service Commission prior to any Section 271 approval in order to force BellSouth to perform at the same levels already required of Verizon and SWBT.

II. THE LEGAL STANDARD

In order for the FCC to approve a Section 271 application, a BOC must first demonstrate that it complies with the competitive checklist in Section 271(c)(2)(B).[4] The Commission examines a BOC's OSS through checklist items 2

[2] *See* Letter from Kathleen Levitz, Vice President-Federal Regulatory, BellSouth to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-277 (October 12, 2001) ("BellSouth October 12, 2001 Letter").

[3] It goes without saying that such performance will be reflected properly only when the underlying data is accurate.

[4] *See* 47 U.S.C. § 271(c)(2)(B).

and 4, which require that the BOC provide competitors with access to UNEs and resale, respectively.[5]

The "nondiscriminatory access" standard for evaluating a BOC's OSS performance depends on whether the particular functionality does or does not have a retail analog. For OSS functions that are analogous to those that a BOC provides to itself, its customers or its affiliates, the BOC must provide access that permits competing carriers to perform these functions in "substantially the same time and manner" as the BOC.[6] For OSS functions that have no retail analog, the BOC must offer access "sufficient to allow an efficient competitor a meaningful opportunity to compete."[7]

The Commission analyzes whether a BOC has met the nondiscrimination standard for each OSS function using a two-step approach. First, the Commission determines "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."[8] The Commission next assesses

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[5] *See Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, ¶ 83 (1999) ("*New York Order*"); *Application of BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina*, Memorandum Opinion and Order, 13 FCC Rcd 539, 547-48 (1999) ("*South Carolina Order*"); *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, 13 FCC Rcd 20653 (1998) ("*Second Louisiana Order*").

[6] *New York Order*, ¶ 83.

[7] *Id.*, ¶ 86.

[8] *Id.*, ¶ 87; *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services*
(Continued on next page)

"whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter."[9]

Under the second inquiry, the Commission examines performance measurements and other evidence of commercial readiness to ascertain whether the BOC's OSS is handling current demand and will be able to handle reasonably foreseeable future volumes.[10] The Commission has said that, where available, the most probative evidence that OSS functions are operationally ready is actual commercial usage.[11] In reviewing performance data, the Commission looks at the totality of the circumstances and generally does not view individual performance disparities, particularly if they are isolated and slight, as dispositive of whether a BOC has satisfied its checklist obligations.[12] Individual performance disparities may, nevertheless, result in a finding of checklist noncompliance, particularly if the disparity is substantial or has endured for a long time, or if it is accompanied by other evidence of discriminatory conduct or evidence that competing carriers have been denied a meaningful opportunity to compete.

in Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20616 (1997) ("*Michigan Order*").

[9] *See New York Order*, 15 FCC Rcd at 3992, ¶ 88.

[10] *Id.* at 3993, ¶ 89.

[11] *Id.*

[12] *See Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6301-02, ¶ 137 (2001) ("*Kansas/Oklahoma Order*").

III. THE DATA SUBMITTED BY BELLSOUTH REGARDING ITS COMPLIANCE WITH THE GEORGIA PERFORMANCE STANDARD FRAMEWORK IS WHOLLY INSUFFICIENT TO SATISFY CHECKLIST ITEM NUMBER 2

As discussed above, in evaluating whether an RBOC has demonstrated compliance with checklist item 2, the Commission has said that it places particular emphasis on the commercial usage of CLECs.[13] In order to perform that evaluation, the Commission relies heavily on the performance measurements data submitted by the RBOC.[14]

Birch has conducted an extensive review of the data supplied by BellSouth with respect to several key performance measures. That review has revealed systemic flaws in BellSouth's data that renders the data wholly unreliable. Accordingly, BellSouth simply has not demonstrated that its level of performance meets the standards of Section 271. The Application cannot be granted.

A. BELLSOUTH IS MATERIALLY OVERSTATING FLOW-THROUGH FOR BIRCH

As the Commission has recognized,[15] one of the most critical measures of whether an RBOC is providing CLECs with nondiscriminatory access to UNEs is the percentage of CLEC electronic service orders that "flow-through" the RBOC's OSS without requiring manual intervention.

In the Application, BellSouth reports aggregate, region-wide UNE flow-through rates of 74.87%, 70.43% and 78.5% at for the months of May, June and

[13] *See e.g.*, *Pennsylvania Order*, Appendix C, ¶ 31.

[14] *Id.*

[15] *Massachusetts Order*, at 77.

July, respectively.[16] Specifically for Birch, BellSouth reported 54.04%, 62.75% and 94.20% for those same months. *Sauder Aff.*, ¶ 9.

These reported numbers are significant in that they reflect that, for the May – July 2001 period on which the Application is based, BellSouth missed by a wide margin the 85% benchmark rate for UNE order flow-through set by the Georgia Commission in the SQM. Even more significant, however, is the dramatic spike in the Birch-specific flow-through rate for July. The Birch-specific data reflects over a 40% increase in flow-through over a two-month period.[17] While Birch would like to applaud BellSouth's miraculous increase in the flow-through of Birch UNE-P orders, further investigation of the raw data underlying BellSouth's reported performance by T.J. Sauder, Birch's Manager, ILEC Performance Data, indicates that BellSouth's reported flow-through performance does not reflect BellSouth's actual performance. BellSouth has materially overstated the flow-through performance it has achieved for Birch's simple, POTS-based set of UNE-P orders, and excluding all Birch-caused errors.

[16] Brief in Support of Application by BellSouth for Provision of In-Region, InterLATA Services in Georgia and Louisiana, CC Docket No. 01-277 (October 2, 2001), 75 ("BellSouth Brief"). BellSouth originally reported flow-through rates of 74.87%, 78.33% and 90.0% for May, June and July. BellSouth first provided the restated numbers that appear in the application in its October 1, 2001 filing with the Georgia PSC in Docket No. 7892-U. That filing, however, only reflected changes to the summary reports that aggregate data for all CLECs. BellSouth did not provide CLEC-specific restatements until October 15, 2001, or thirteen days after it filed the Application. Thus, CLECs have been given no opportunity to perform a meaningful review of the CLEC-specific data. It should also be noted that the exhibits to Mr. Varner's Affidavit in support of the Application provide the old and no longer valid flow-through reports that had reflected improved service.

[17] It is important to note that Birch's analysis excludes all orders with Birch-caused errors.

1. Partially Mechanized Orders Misreported as Flow-Through

In order to validate (or invalidate as it turned out) the dramatic increase in flow-through for Birch, Mr. Sauder first contacted Birch's internal provisioning Group to assess whether the group had experienced the increase in flow-through reported by BellSouth. Finding that the group had not experienced what BellSouth had reported, Mr. Sauder next evaluated data relative to the Firm Order Confirmation ("FOC") Timeliness Measurement. *Sauder Aff.*, ¶¶ 10-13. The FOC Timeliness Measurement is used to determine if FOCs are returned to CLECs in a timely manner. This is a key measurement because it reflects the committed due date CLECs will ultimately communicate to their customer on the date service will be provisioned.

As explained by Mr. Sauder, the FOCs are reported according to whether they flow-through (handled electronically) or require manual intervention by BellSouth (partially mechanized) to return FOC responses to CLECs. *Sauder Aff.*, ¶ 11. Mr. Sauder found that BellSouth reported **[redacted]** of the **[redacted]** Local Service Requests ("LSRs") submitted by Birch that were eligible for flow-through treatment for July 2001 as having flowed-through, but only **[redacted]** FOCs were captured and reported as being handled electronically under the FOC Timeliness measurement. *Sauder Aff.*, ¶ 11. Thus, there was a discrepancy between the Flow-Through and FOC Timeliness measurements in that **[redacted]** LSRs (33%) were reported as having flowed-through, but were not accounted for as mechanically handled in the FOC Timeliness measurement. *Sauder Aff.*, ¶ 14. The large discrepancy between the numbers caused Mr. Sauder to conduct yet further investigation, as the number was indicative of a problem with either the Flow-Through data or the data associated with the FOC Timeliness measurement.

In an effort to reconcile the data, Mr. Sauder sent an electronic mail transmission to BellSouth on August 30, 2001 inquiring about specific concerns regarding the data. *Sauder Aff.*, Attachment 1. Consistent with BellSouth's general responsiveness to CLEC problems, Mr. Sauder received a response to his inquiries from BellSouth 35 days later. BellSouth's rationale for the discrepancy in Mr. Sauder's numbers for flow-through was that BellSouth made a system change to include supplementary orders canceling prior orders within the scope of orders covered by the Flow-Through measurement, thereby resulting in a higher flow-through rate for BellSouth. *Sauder Aff.*, ¶ 12 and Attachment 2. BellSouth's response also indicated that "dummy FOCs" issued by BellSouth were not included in the FOC Timeliness measurement. *Id.* BellSouth rationalized that the foregoing response was the reason for the **[redacted]** order discrepancy between the Flow-Through data and the FOC Timeliness data.[18] However, as Mr. Sauder elaborates, BellSouth's explanation would mean that Birch cancels roughly **[redacted]** orders per month, a result at odds with what Birch knew about its own cancellation rate. *Sauder Aff.*, ¶¶ 14-18. Indeed, the problem with BellSouth's logic is that Birch's order volume for the entire BellSouth region is **[redacted]**. Birch, or any small CLEC cannot afford to cancel a third of its orders, from an economic perspective. If it did, Birch's market expansion into BellSouth would be short-lived.

As BellSouth's rather illogical explanation did not address Birch's concerns, Mr. Sauder furthered his investigation on an "LSR by LSR" basis. As

[18] This reflects Birch's data for all of the BellSouth states in which it operates.

attested to in his affidavit and supporting documentation, Mr. Sauder used BellSouth-supplied processes and instructions to analyze the raw data and discovered that a multitude of orders were reported as being flowed-through, but in fact contained evidence of manual intervention within the record of the LSR maintained by BellSouth. *Sauder Aff.*, ¶¶ 13-18. Although the orders were being reported as flow-through, the same orders were reported under the partially mechanized category of the FOC Timeliness measurement, indicating that the orders had been manually handled. Overall, for the month of July, Mr. Sauder discovered **[redacted]** Birch LSRs that were reported as flow-through *and* as partially mechanized under the FOC Timeliness measurement. *Sauder Aff.*, ¶ 18. By definition, a particular order cannot both flow-through and be manually handled. *Sauder Aff.*, ¶ 11. Removing the orders reported as partially mechanized from the Flow-Through measurement reduces the Birch flow-through rate (excluding Birch errors) from the 94.20% reported by BellSouth to 67.26% as actually experienced by Birch, for an overstatement of Birch's flow-through of 25%. *Sauder Aff.*, ¶ 18.

2. Miscounting of Orders With Multiple FOCs

Although the overstatement of Birch's flow-through rate and related findings reveal a variety of problems inherent in BellSouth's present application, Mr. Sauder's investigation found even more. Mr. Sauder discovered additional orders on which BellSouth manually intervened, but actually reported as flow-through. Specifically, Mr. Sauder found that for certain orders that were initially processed electronically, Birch received a second FOC transaction from BellSouth that typically contains due date information that has been changed from the first FOC returned.

Sauder Aff., ¶19. The second FOC transaction indicates that manual handling was required to process Birch orders with correct due date information.

Mr. Sauder's supporting documentation to his affidavit illustrates that for **[redacted]** LSRs, out of the **[redacted]** that were reported as flow-through, Birch received multiple FOCs. *Sauder Aff.* at Attachment 7. As Mr. Sauder confirms, the due date change is consistent with the vast majority of LSRs for which Birch received multiple FOCs from BellSouth. *Sauder Aff.*, ¶ 19. Mr. Sauder concluded that eliminating the **[redacted]** out of the **[redacted]** LSRs for which Birch received multiple FOCs (3 LSRs were excluded as they were initially reported as partially mechanized) from the flow-through count would further reduce BellSouth's reported flow-through rate for Birch from 67.26% to 57.09%, resulting in an overstatement by BellSouth of roughly 37%. Again, Mr. Sauder's analysis excludes any Birch errors. Not only did BellSouth grossly overstate Birch's flow-through, but BellSouth also failed to report the second FOC transaction issued to Birch for purposes of the FOC Timeliness measurement in *any* of the **[redacted]** examples analyzed by Mr. Sauder. *Sauder Aff.*, ¶ 22.

B. BELLSOUTH'S DATA CANNOT BE TRUSTED OR RELIED UPON TO SUPPORT THIS APPLICATION

What does the foregoing analysis mean? At the most basic level it shows that the actual flow-through levels for Birch's UNE LSRs are far lower than the levels reported by BellSouth. Birch could not validate BellSouth's improvement because BellSouth did *not* improve its flow-through at all, but in fact performed consistently in the 55-65% range, as it has since Birch expanded into the BellSouth region. These excessively low levels of flow-through obviously result in Birch contending with manual intervention by BellSouth on at least 35-45% of its service orders. As discussed in section III.C, this materially impairs Birch's ability to provide service to its customers.

Even more significant, however, is that since BellSouth's data is demonstrably flawed, it cannot be relied upon to support the Application. While BellSouth asserts that its performance data demonstrates that it provides parity service with respect to flow-through,[19] Birch's complete analysis proves that BellSouth's data cannot be trusted. It is easy to assert that performance data proves a particular result when that data is manipulated accordingly. Mr. Sauder's affidavit demonstrates Birch's attempt to engage BellSouth to explain the key discrepancies in BellSouth's data, but, as the Commission can see, BellSouth's explanation—that Birch cancels one out of every three orders it submits to BellSouth—is completely illogical.[20] To date, Birch has not received a satisfactory explanation of Birch's flow-through discrepancy and can therefore only conclude that the data provided by BellSouth is invalid. Indeed, it is the only conclusion that can be reached by this Commission.

Mr. Sauder also found evidence that BellSouth failed to report, ***at all***, the instances where BellSouth returned a second FOC transaction to Birch, such transactions unequivocally require manual intervention. Thus, neither Birch nor this Commission can conclude, with even a reasonable degree of certainty, that BellSouth is properly including or excluding various data to support Mr.Varner's or Mr. Stacy's claims of providing CLECs with parity service with respect to flow-

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[19] BellSouth Brief, 74.

[20] Birch is not only troubled that BellSouth could not offer a logical explanation for its data discrepancies, but that it took BellSouth 35 days to do so.

through. BellSouth's data must be distrusted. BellSouth cannot be deemed to satisfy checklist item number 2 without further investigation into the integrity of its data.

It is significant that BellSouth has acknowledged that the flaws in BellSouth's data detected by Birch are the result of systemic errors.[21] BellSouth explained that the discrepancy is a result of a system change. BellSouth thus cannot wave aside the discrepancies in its reported and Birch's experienced flow-through rate as a Birch-specific problem. Rather, the errors identified by Birch could reflect problems that infect BellSouth's reporting for *all* CLECs.

As the Commission has repeatedly made clear, in a Section 271 proceeding, the burden of proof lies with the applicant. A "BOC must present a prima facie case in its application that all of the requirements of section 271 have been satisfied."[22] While the burden of persuasion may then shift to opponents of the BOC's entry, the Commission has recognized the BOC applicant retains at all times the ultimate burden of proof that its application satisfies section 271.[23]

Here, Birch has supplied the Commission with indisputable evidence that BellSouth materially misreported its flow-through data. Not only does this mean that BellSouth has failed to meet its burden with respect to the flow-through data in particular, it also calls into question the integrity of *all* the data provided by BellSouth in support of its application. The Commission simply has no way of

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[21] *See Sauder Aff.*, ¶ 12.

[22] *Michigan Order*, ¶ 44.

[23] *Id.*

knowing if any data submitted by BellSouth is or is not reliable. The application must therefore be rejected.

C. BELLSOUTH'S POOR FLOW-THROUGH RATE MATERIALLY IMPAIRS BIRCH'S ABILITY TO PROVIDE SERVICE TO ITS CUSTOMERS

Not only does BellSouth's misreporting of its flow-through data mean that BellSouth's data cannot be relied upon and that the Application therefore must be rejected. The unacceptably low flow-through rate is a separate ground for denying the Application. Birch recognizes that this Commission has previously determined that a low level of flow-through is not, in and of itself, an indication that a CLEC is being denied nondiscriminatory access to a RBOC's ordering systems.[24] However in several prior 271 orders, this Commission has concluded:

> Flow-through rates, therefore, are not so much an end in themselves, but rather are a tool used to indicate a wide range of possible deficiencies in a BOC's OSS that may deny an efficient competitor a meaningful opportunity to compete in the local market.[25]

That is the case here. Birch's commercial experience in the BellSouth region demonstrates that BellSouth's woefully inadequate levels of flow-through are the catalyst for other deficiencies within BellSouth's OSS. The most notable of those deficiencies are BellSouth's excessive reliance on manual processes to complete UNE orders, provisioning inaccuracy for reasons attributable to BellSouth, and inadequate jeopardy notification. All of these deficiencies, stemming from and/or contributing to the extremely low levels of flow-through, render Birch unnecessarily

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[24] *See, e.g. New York Order*, ¶ 161.

[25] *New York Order*, ¶ 162; *see also Texas Order*, ¶ 179.

inefficient and deny Birch a meaningful opportunity to compete in Georgia and the rest of the region.

1. Manual Intervention

What do low levels of flow-through mean to Birch? Flow-through is the most critical indicator of whether Birch is able to provision its orders at (or near) parity with BellSouth retail. As the Commission found with respect to BellSouth's failed Louisiana application, "excessive reliance on manual processing, especially for routine transactions, impedes the BOC's ability to provide equivalent access."[26] As the Commission recognized, "it is virtually impossible for orders that are processed manually to be completed in the same amount of time as orders that flow through electronically."[27] Therefore, "it is difficult for equivalent access to exist when BellSouth processes a significant number of competing carriers' orders manually."[28] Birch's experience bears out this finding.

In addition, excessive manual intervention requires Birch to transform into a less mechanized, more manual, operationally inefficient provider. This in turn materially diminishes Birch's ability to compete in two ways. First, if excessive manual intervention is required on BellSouth's part to process Birch's orders, the number of errors and margin of error in provisioning accuracy increases. A UNE provider like Birch relies heavily upon the performance of its RBOC vendor/competitor to ensure that its own provisioning operations run smoothly,

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[26] *Second Louisiana Order*, ¶ *110.*

[27] *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order*, 13 FCC Rcd 6245, ¶ 25 (1998) ("*First Louisiana Order*").

[28] *Id.*

thereby creating a positive end user conversion experience. BellSouth's manual handling of orders can result in customer expectations not being met. When that occurs, Birch receives the blame and not only may lose the customer but also may suffer a blow to its reputation that adversely affects its overall marketing efforts.[29] Second, manual processing of orders by BellSouth necessitates a considerable expenditure of additional resources by Birch to police BellSouth's handling of the order.

BellSouth reports region-wide UNE flow-through rates of 75%, 70.4% and 78.5% for the months of May, June and July 2001 respectively. *See* Appendix L-GA., Tab 6 (BellSouth Supplemental Filing).[30] This translates into between 21.5% and 29.6% of all UNE orders, *that are designed to flow-through*, are being manually handled by BellSouth throughout the region. As evidenced herein, Birch experiences manual intervention on its orders somewhere between 35-45% of the time. One of the most startling facts about Birch's orders, however, is that the vast majority (over 95%) of all Birch orders processed in the BellSouth region are simple, "plain old telephone services" based UNE-P orders. As the Commission found was the case with respect to POTS resale, UNE-P orders "should be among the easiest orders to submit and process."[31]

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[29] This point is discussed further in section III.C.2. below.

[30] Because Birch cannot access the raw data upon which BellSouth's aggregate UNE flow-through rates are based, Birch cannot validate the accuracy of the same. However, based on its analysis of Birch raw data, and the results provided herein, Birch strongly questions the validity of the data used to support even this level of flow-through for BellSouth.

[31] *Second Louisiana Order*, ¶ 110.

While the Commission has in the past approved applications with flow-through rates similar to those claimed by BellSouth, the Commission was clear that it was willing to accept those lower flow-through rates at least in part because they included complex orders and/or orders not designed to flow through.[32] Birch's experience, however, demonstrates that BellSouth is incapable of achieving acceptable flow-through rates with respect to even the simplest categories of orders, which clearly illustrates that BellSouth fails to provide nondiscriminatory access to its OSS.

Mr. Stacy of BellSouth speculates that the overall flow-through rates will increase as BellSouth gains further experience in handling UNE orders. *See Stacy Aff.*, ¶ 310. The Commission has repeatedly made clear, however, that "a BOC's promises of future performance to address particular concerns raised by commenters have no probative value in demonstrating its present compliance with the requirement of section 271. Paper promises do not and cannot satisfy a BOC's burden of proof."[33] If the Application cannot be granted based on the actual evidence filed with the application, "instead of prospective evidence that is contingent on future behavior," *id.*, the Application must be rejected.

In any case, it is unclear what "further experience" BellSouth could possibly require. BellSouth has had since at least 1997 to learn how to process UNE orders effectively. In fact, BellSouth reports an extensive loss of market share to CLECs since the 1996 Act was passed. Presumably, enough of those lost access lines have been to UNE providers so that BellSouth has had plenty of experience in

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[32] *See Texas Order*, ¶ 171, n. 461.

[33] *Michigan Order*, ¶ 55.

becoming proficient in provisioning UNE orders effectively. Further, BellSouth touts its recent $1.6 billion investment into OSS enhancements.[34] One would think that with so much of its market share lost to competitors, a great deal of them being UNE providers, BellSouth would be able to achieve much higher levels of flow-through on UNE orders today. BellSouth cannot even meet the low 85% benchmark set by the Georgia Commission. Further, if Birch or any other carrier expended $1.6 billion on system enhancements, it would expect to achieve far greater than 70.4-78.5% flow-through. This Commission has previously found that:

> "Where an applicant is unable to demonstrate a high flow-through rate, and thus manual processing of mechanized orders is more common, we may require more extensive data with respect to this issue."[35]

Birch suggests that the Commission seize the opportunity, now, to require additional, *valid* data from BellSouth with respect to flow-through, before Birch and other CLECs have to contend with BellSouth's manual processes in a post-271 environment, which will surely be worse.

2. Service Order Inaccuracy

BellSouth's alarmingly low flow-through rates force Birch to rely excessively on BellSouth's manual processes in order to provision a significant percentage of its orders. Birch must constantly monitor its orders to ensure accuracy and actual completion. Birch has also discovered that it cannot trust the accuracy of Birch service orders reproduced by BellSouth. In certain instances, Birch submits its LSRs electronically to BellSouth, but for some phantom reason,

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[34] *See BellSouth October 12, 2001 Letter.*

[35] *Texas Order*, ¶ 182.

BellSouth's OSS cannot process the same electronically. *Sauder Aff.*, ¶ 24. As a result, BellSouth's Local Carrier Service Center ("LCSC") manually generates internal service orders from Birch LSRs. Not surprisingly, with these manual interventions, Birch has discovered BellSouth-caused errors introduced on BellSouth's internal service orders. *Sauder Aff.*, ¶¶ 23-27. These errors occur with such frequency that Birch now actually anticipates BellSouth-caused problems in the service order completion process by requesting extended due dates, to ensure that any problems can be adequately addressed and rectified prior to conversion. *Sauder Aff.*, ¶ 23. What is extremely disturbing in this analysis is that Birch is forced to request the extended due dates for orders merely requesting a conversion of a customer's existing BellSouth retail service to Birch UNE-P service. *Id.* This type of conversion of a customer's service requires no field work and would normally require same day due dates.

Unfortunately, Birch's manual process implemented to review BellSouth internal service orders for accuracy prior to conversation of the customer does not always prevent service order errors from impacting customers. Upon review of the raw data for the Average Completion Interval measurement, it appears that in a number of instances Birch submitted an accurate LSR for processing, only to find that BellSouth has introduced errors (incorrect features or services) on its end, of which Birch was not aware until after the service was provisioned incorrectly. *Sauder Aff.*, ¶¶ 20, 24 and Attachment 9.[36] Only if notified by an angry customer (who inevitably blames Birch for the errors), or upon further manual review of the

[36] It is worth reiterating that this analysis only includes errors that Birch was unable to detect through its manual review prior to order completion.

orders subsequent to conversion will Birch become aware of the provisioning errors introduced by BellSouth. Birch is then forced to contact the LCSC to issue a new order to correct these provisioning errors.

The additional service orders required to correct the errors introduced by BellSouth were also included in the Average Completion Interval measurement. *Sauder Aff.*, ¶¶ 28-29 and Attachment 9. The inclusion of these orders within this measurement is an anomaly, in that the majority of the "correction" orders complete on the same date as they are issued. This methodology results in an understatement of the Average Completion Interval measurement. Again, BellSouth's data lacks the integrity to support this measurement in this application.

Furthermore, while BellSouth's Mr. Varner claims that these customer-impacting errors are captured within the Trouble within 30 Days measurement, *see Varner Aff.*, ¶ 153, Mr. Varner is wrong and misleads this Commission. BellSouth does not open trouble tickets for service order related problems. Rather, the CLEC is referred to the LCSC to correct the errors. Therefore, it follows that the service order errors referenced herein would not be captured under the Trouble within 30 Days measurement, as Mr. Varner would have this Commission believe, because trouble tickets are used for this measurement's reporting purposes and trouble tickets are never opened for service related problems. The dramatic impact of BellSouth's omission of these corrections on the number of Trouble within 30 Days measurement is explained in the Sauder affidavit.

BellSouth's systems seem to perform in such way that an inordinate amount of manual intervention is necessary to provision CLEC orders. Unfortunately, this manual intervention has routinely produced BellSouth-introduced errors onto Birch's orders. These errors have caused Birch to adjust its internal processes to perform in a more manual mode than necessary, rendering Birch's provisioning group needlessly inefficient and Birch's mechanized ordering systems almost useless. The end result is that Birch cannot provision service to its end users as quickly and sometimes accurately as BellSouth due to BellSouth's system errors and/or personnel errors, thus creating a lack of parity between Birch and BellSouth retail. This is further evidence that BellSouth does not provide nondiscriminatory access to its OSS.

3. Inadequate Jeopardy Notifications

Through the course of Birch's review of the raw data underlying the Average Completion Interval measurement, Birch discovered that, region-wide, BellSouth reported BellSouth-caused missed due dates for 42 Birch orders between May and August 2001. *Sauder Aff.*, ¶ 30. A further analysis of the orders revealed the specific reasons for which BellSouth missed the provisioning due dates. BellSouth is required to issue a jeopardy notification on each order,[37] indicating the missed due date and the reason for it. Upon review of Birch's internal ordering database, it was revealed that *zero* out of the 42 orders received a BellSouth caused jeopardy notification. *Sauder Aff.*, ¶ 30.

Again, this data illustrates the same two themes that run consistently through these comments. The first is that BellSouth continues to force Birch (and other CLECs) into significant reliance on manual processes throughout the provisioning process. That is, without jeopardy notifications being issued, Birch's mechanized ordering system is rendered unreliable and almost useless to assist in

[37] *Texas Order*, ¶ 184; *New York Order*, ¶ 184.

successfully provisioning orders or surveying the status of orders to resolve any additional problems. Birch must manually search BellSouth's systems to determine the cause for customer delays. It defeats the purpose of mechanized ordering and impedes Birch's ability to communicate missed due date, in real time, to its end users. The second theme is that the data used by BellSouth lacks integrity. As Birch has demonstrated time and time again throughout these comments, it is difficult to discern BellSouth's true performance in any area analyzed by Birch due to unexplained discrepancies in Birch raw data and the performance reported by BellSouth. Birch cannot validate, with any degree of consistency, that Birch's actual commercial experience (evidenced in the raw data) is accurately reflected in BellSouth's reported performance. As Birch has demonstrated, BellSouth's low levels of flow-through proximately cause excessive reliance on manual processes by BellSouth and BellSouth-caused service order accuracy errors. The low levels also point to inherent problems in BellSouth's OSS, in that orders that are designed to flow-through (simple, POTS UNE-P orders) require manual intervention by BellSouth. Birch urges this Commission to reject the application because it fails to show that BellSouth does not excessively rely on manual processes (in turn forcing CLECs to do the same), as well as fails to provide accurate data to support BellSouth's reported performance.

IV. THE GEORGIA PERFORMANCE STANDARDS MUST BE MODIFIED TO HOLD BELLSOUTH TO AT LEAST TO THE SAME LEVELS SET FOR VERIZON AND SWBT

Birch continues to assert, as it has at the state level, that BellSouth's current Performance Measurement framework—the SQM approved in Georgia—is inadequate to ensure competitors a meaningful opportunity to compete in a post-